

FILED

2014 JAN -7 PM 4:53

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

BY: *[Signature]*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

U.S. BANK NATIONAL ASSOCIATION AS)
TRUSTEE FOR THE STRUCTURED ASSET)
INVESTMENT LOAN TRUST, MORTGAGE)
PASS-THROUGH CERTIFICATES, SERIES)
2005-11,

Plaintiff,

vs.

DANILO H. JAIME, et al.,

Defendants.

CASE NO. CV 13-9457-UA (DUTYx)

ORDER SUMMARILY REMANDING
IMPROPERLY-REMOVED ACTION

The Court will remand this unlawful detainer action to state court summarily, because it was removed improperly.

On November 4, 2013, defendant Aracely Rodriguez lodged a Notice of Removal with respect to Los Angeles Superior Court Case No. 13F01546 (the “Complaint”) and presented an application to proceed *in forma pauperis* (*see* docket for Case No. CV 13-8156-UA (DUTYx)). The Complaint alleged what appeared to be a routine state law unlawful detainer claim (the “Unlawful Detainer Action”). On November 14, 2013, the Court denied the *in forma pauperis* application and ordered that the Complaint be remanded to the state court, because it had been removed improperly and this federal court lacked jurisdiction over the Unlawful Detainer Action. The Court found, *inter alia*, that

1 "the underlying state action is a straight-forward unlawful detainer action, and therefore
 2 does not present a federal question" (see Docket No. 3 at 2).¹

3 On December 24, 2013, another defendant in the Unlawful Detainer Action --
 4 Danilo H. Jaime -- lodged a Notice Of Removal of the Unlawful Detainer Action to this
 5 Court and also presented an application to proceed *in forma pauperis*. The Court has
 6 denied the application under separate cover, because the Unlawful Detainer Action was
 7 not properly removed. To prevent the Unlawful Detainer Action from remaining in
 8 jurisdictional limbo, the Court issues this Order to remand the action to state court.

9 As a threshold matter, the Notice of Removal is defective, because defendant Jaime
 10 failed to append a copy of the Complaint to the Notice of Removal. Nonetheless, the
 11 Court has taken judicial notice of the copy of the Complaint lodged in Case No. CV 13-
 12 8156-UA (DUTYx).

13 Defendant Jaime alleges that the Complaint originally could have been filed in
 14 federal court based on either federal question jurisdiction or diversity jurisdiction.
 15 However, there is no basis for concluding that the Unlawful Detainer Action could have
 16 been brought in federal court in the first place, in that defendant Jaime does not
 17 competently allege facts supplying any basis for federal subject matter jurisdiction, and
 18 therefore, removal is improper. 28 U.S.C. § 1441; *see Exxon Mobil Corp v. Allapattah*
 19 *Svcs., Inc.*, 545 U.S. 546, 563, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005).

20 With respect to federal question jurisdiction, the Court previously determined that
 21 the Complaint presents a routine state law unlawful detainer action and does not allege any
 22 federal question. Defendant Jaime asserts that federal question jurisdiction exists, because
 23 he withheld rent based upon plaintiff's alleged violations of the Fair Housing Act and 42
 24 U.S.C. § 3604(f)(3)(A) and (C). Defendant Jaime's allegations regarding such violations
 25 may be raised as a defense in the Unlawful Detainer Action. To invoke removal based

27 ¹ Pursuant to Rule 201 of the Federal Rules of Evidence, the Court takes judicial notice of its files
 28 and records in Case No. CV 13-8156-UA (DUTYx), including the contents of the Complaint.

1 upon federal question jurisdiction, however, the federal issue or claim must arise in the
2 underlying complaint the removal of which is sought. Merrell Dow Pharmaceuticals, Inc.
3 v. Thompson, 478 U.S. 804, 808, 106 S. Ct. 3229 (1986) (“the question whether a claim
4 ‘arises under’ federal law must be determined by reference to the ‘well-pleaded
5 complaint,’ and “the question for removal jurisdiction must” be determined based upon
6 the complaint’s allegations). “A defense that raises a federal question is inadequate to
7 confer federal jurisdiction.” *Id.* Even if defendant Jaime can assert federal law violations
8 to defend against the Unlawful Detainer Action in state court, any such defense does not
9 confer federal question jurisdiction and, thus, is not a basis for removal.

10 With respect to diversity jurisdiction, even if complete diversity of citizenship
11 exists, the amount in controversy does not exceed the diversity jurisdiction threshold of
12 \$75,000; indeed, the Complaint expressly alleges that the amount demanded “does not
13 exceed \$10,000.” *See* 28 U.S.C. § 1332. Moreover, in his Civil Cover Sheet, defendant
14 Jaime alleges that he is a California citizen. As a California citizen, defendant Jaime may
15 not remove this action on the basis of diversity jurisdiction. *See* 28 U.S.C. §§ 1332(a),
16 1441(b)(2).

17 Accordingly, IT IS ORDERED that: (1) this matter be REMANDED to the Superior
18 Court of California, Los Angeles County, Long Beach Judicial District, 415 W. Ocean
19 Blvd., CA 90802, for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c);
20 (2) the Clerk shall send a certified copy of this Order to the state court; and (3) the Clerk
21 shall serve copies of this Order on the parties.

22 IT IS SO ORDERED.

23 DATED: 1/3/14

24
25
26
27
28

GEORGE H. KING
CHIEF UNITED STATES DISTRICT JUDGE